IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

Crl.Rev.Pet.No. 626 of 1999()

CRA.169/1997 of ADDL.SESSIONS COURT, KOZHIKODE
CC.420/1995 of JUDL.MAGISTRATE OF FIRST CLASS, NADAPURAM

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REVN. PETITIONER: APPELLANT/ ACCUSED

VADEKKARA RIYAS, AGED 30 YEARS,
S/O.AMMAD, KANNANKUNNUMMAL HOUSE,
KAVILUMPARA AMSOM DESOM,
KOZHIKODE DIST.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.DILIP.S

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.626/1999

ORDER ON CRL.MP. 2782/1999 IN CRL.RP. NO.626/1999

DISMISSED

11.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P. A. TO JUDGE

tss

K.R.UDAYABHANU, J

Crl.R.P.No.626 of 1999

Dated this the 11th day of July, 2007

ORDER

The revision petitioner is the accused in C.C.No.420/95 in the court of JFCM, Nadapuram with respect to the offences under Sections 457 and 379 IPC on the allegation that he committed house-trespass in the night and took away a gold chain weighing 4 gm. 200 mgm. from the neck of the child who was sleeping in a cot near the window of the bed room. He stands convicted and sentenced to undergo R.I. for 1½ years for each of the offences.

2. The evidence adduced in the matter consisted the testimony of PWs' 1 to 7, Exts. P1 to P5 and MO1 gold chain. PW6 is the defacto complainant and PWs' 3 and 7 are the witnesses to Section 27 recovery vide Ext. P4 seizure mahazar. PW3 did not support the prosecution. PW5 is the investigating officer who effected the recovery. It is contended by the counsel for the revision petitioner that in the FI statement it is mentioned that there is a mark “U.M.” on the gold chain and that

in the evidence adduced and in the recovery mahazar there is no mention about the above mark. Hence, recovery cannot be said to be of the chain that was allegedly stolen. On a perusal of evidence adduced in the matter, I find that the above question was not put to any of the witnesses nor is it seen raised before the trial court. It is seen that PW6, the defacto complainant, has identified MO1 gold chain as the one stolen. The recovery has been proved by PW5, the investigating officer and is supported by PW7, the independent witness.

3. In view of the concurrent findings of the court below and in the light of the evidence adduced, I find that there is no scope for interference in exercise of the revisional jurisdiction of this court. There is no case that subsequently the accused was involved in any other offence of like nature. The conviction is confirmed.

4. Counsel for the revision petitioner has pleaded for leniency pointing out that at the time of occurrence the accused was aged only 18 years and that he has obtained an employment abroad. Further, the incident has taken place on 7.5.1995 and

more than 10 years have elapsed since the commencement of the criminal proceedings.

5. In the circumstances, I find that the sentence is liable to be modified. The sentence is modified to pay a fine of Rs.5,000/- for each of the offences under Sections 457 and 379 IPC and in default, to undergo simple imprisonment for six months each.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl